



**Attorney General
Lee Fisher**

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PR 94-109

Via Airborne Express

Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Washington, D.C. 20554

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Secretary's Office:

Enclosed please find the original and five (5) copies of the "Statement of the Public Utilities Commission of Ohio's Intention to Preserve its Right for Future Rate and Market Entry Regulation of Commercial Mobile Services" being submitted pursuant to the FCC's order and the Amended Communications Act.

Please return a time-stamped copy to me in the provided self-addressed postage-prepaid envelope.

Respectfully submitted,

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PR 94-109 ✓

PR 94-587

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of the State of)
Ohio for Authority to Continue to Regulate)
Commercial Mobile Radio Services.)

**STATEMENT OF
THE PUBLIC UTILITIES COMMISSION OF OHIO'S
INTENTION TO PRESERVE ITS RIGHT FOR
FUTURE RATE AND MARKET ENTRY
REGULATION OF COMMERCIAL MOBILE SERVICES**

I. INTRODUCTION

The Public Utilities Commission of Ohio is the exclusive state regulating authority of telecommunications rates and services in Ohio, pursuant to Ohio Revised Code Chapters 4901, 4903, 4905, 4909, 4927, 4931 and other related provisions. (See attached affidavit). As such, the Public Utilities Commission of Ohio has a vital interest in all aspects of telecommunications services, including the expanding and continually emerging industry of wireless communications and commercial mobile radio services (CMRS), such as paging and cellular service. The Public Utilities Commission of Ohio currently exercises jurisdiction over cellular service providers and radio common carriers.¹ The Public Utilities Commission of Ohio seeks to foster competition in the cellular resale market. The Public Utilities Commission of Ohio does not presently set rates or limit market entry. Whether or not the FCC-mandated industry structure of only two providers per market, coupled

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Such jurisdiction and regulation existed prior to June 1, 1994 and continues to exist presently.

with both current and future functional substitutes, will be sufficient to impose the degree of market discipline necessary to obviate any need for regulation remains to be seen in our view. Accordingly, this filing is being submitted to preserve the rights of Ohio. Nevertheless, the Commission does use its complaint authority under Sections 4905.26, 4905.33, and 4905.35, Revised Code, to ensure that rates of a cellular wholesaler are not unduly discriminatory, preferential to its affiliates, or set below cost for the purpose of inhibiting competition.

In addition, in accordance with Sections 4905.16, 4905.31, and 4905.48, Revised Code, the Public Utilities Commission of Ohio is engaged in the review of contractual arrangements between two or more regulated utilities, including interconnection agreements and roaming agreements entered into by CMRS providers. This regulation does not directly affect end-user rates and the Public Utilities Commission of Ohio does not consider this review to be tantamount to rate or entry regulation. Instead, it is a necessary endeavor due to the impact which these agreements might have on development and deployment of this state's telecommunications infrastructure.

Accordingly, this filing is being submitted to preserve the rights of Ohio and to ensure on a prospective basis that neither the amended Communications Act nor the FCC's orders preempt the current limited state regulation over rates and market entry, as described above. Likewise, the filing is submitted to ensure that federal law does not prevent the Public Utilities Commission of Ohio from deciding to assert jurisdiction over matters relating to the above-described statutory authority at some point in the future should that action become necessary in order to protect the interests of Ohio citizens.

II. DISCUSSION

The Public Utilities Commission of Ohio currently exercises regulation over cellular service providers and radio common carriers. This regulation encompasses a number of non-rate and non-entry related matters, including the quality of service. Although the Public Utilities Commission of Ohio currently has statutory authority to regulate rate and market entry matters, it has limited its jurisdiction in those areas to complaint cases (complaints brought by customers or competitors pursuant to Ohio Revised Code 4905.26) and restricted contract review jurisdiction to ensure the availability of competitive alternatives, adjudicated on a case-by-case basis.

The Public Utilities Commission of Ohio notes that the FCC, in its Second Report and Order in GN Docket No. 93-252 (Second Report and Order), recognized that a state may engage in rate regulation of CMRS providers if either (1) "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory;" or (2) "such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of telephone land line exchange service within such state." Second Report and Order (adopted 2-3-94), GN Docket No. 93-252, at 91. Sections 4905.26, 4905.33 and 4905.35, Ohio Revised Code, provide for the Public Utilities Commission of Ohio's consideration of the unreasonableness or discriminatory nature of a CMRS provider's rates as required by the FCC's Second Report and Order. Therefore, the Public Utilities Commission of Ohio does not believe that such state regulation should be considered as being prohibited by the amended Communications Act. Section 332(c)(3) of the Communications Act of 1934, as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 394, clearly provides for state regulation where the applicable criteria are established.

With respect to the non-rate regulation of CMRS, Section 332(c)(3) acknowledges and reaffirms that states continue to have full authority to regulate any aspect of CMRS other than rates and market entry. Hence, nothing in the amended Communications Act or the FCC's guidelines requires a state to obtain an approval or endorsement from the FCC in conjunction with such "other" regulation. Consequently, a description of Ohio's non-rate regulation of commercial mobile services described in this filing is offered for informational purposes only.

A description of the limited rate authority and regulation is offered in the context of preserving Ohio's right to pursue more traditional rate and market entry regulation in the future. In this context, it is helpful for the FCC to be aware of the relationship between such "other regulation" and the prospect of rate or market entry regulation. In order for a state like Ohio to responsibly regulate non-rate and non-entry matters, it is necessary to actively monitor and identify the market entrants and the economic dynamics of the industry. That is precisely what the current Ohio regulatory requirements are designed to accomplish.

Moreover, in its Second Report and Order, the FCC has implicitly endorsed this type of state regulation. More specifically, the FCC has determined that the type of information and evidence relevant to a determination of the necessity for state rate regulation for commercial mobile radio services is as follows:

- (1) The number of CMRS providers in the state, the types of services offered by these providers, and the period of time during which these providers have offered service in the state.
- (2) The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable period if annual data is not available), and annual revenues and rates of return for each such provider.

- (3) Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).
- (4) An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.
- (5) Opportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry.
- (6) Specific allegations of fact (supported by an affidavit of a person or persons with personal knowledge) regarding anti-competitive or discriminatory practices or behavior on the part of CMRS providers in the state.
- (7) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. We will consider especially probative the demonstration of a pattern of such rates, if it also is demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.
- (8) Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information regarding complaints filed with the state regulatory commission.

Second Report and Order (adopted 2-3-94), GN Docket No. 93-252, at 94-95. Therefore, it is obvious that any state considering rate and market entry regulation needs to actively monitor and identify the entities engaged in the commercial mobile radio service industry in order to create and maintain the ability to provide such

information to the FCC and to assess the need for developing specific rules and regulations to be implemented. This is true for any state that is contemplating traditional rate and market entry regulations in either the immediate future or a more remote time in the future, and is particularly true for Ohio considering that the Public Utilities Commission of Ohio currently has ample statutory authority to regulate those matters.

Accordingly, the Public Utilities Commission of Ohio hereby submits this filing for the purpose of informing the FCC of the existing Ohio regulatory framework for regulating CMRS providers and to preserve Ohio's right to petition the FCC at some point in the future for the purpose of additionally regulating the rate and/or market entry of commercial mobile radio service providers in the State of Ohio.

Respectfully submitted,

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO:**

LEE FISHER

Attorney General of Ohio



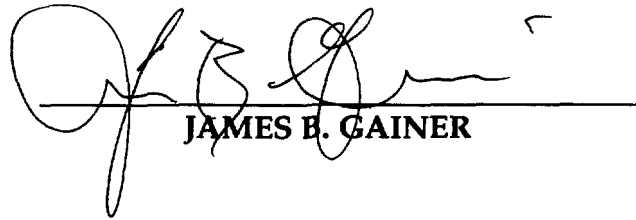
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CERTIFICATION AFFIDAVIT

I, James Gainer, as counsel for the Public Utilities Commission of Ohio, hereby state that I am authorized to represent that the Public Utilities Commission of Ohio is the duly authorized state agency responsible for the regulation of telecommunication services in Ohio.



JAMES B. GAINER

Sworn to before me and subscribed in my presence this 8th day of August, 1994.



NOTARY PUBLIC

ANNE LOUISE HAMMERSTEIN, Attorney at Law

NOTARY PUBLIC, STATE OF OHIO

My commission has no expiration date.

Section 147.03 R.C.